

April 8, 2004

MEMORANDUM

SUBJECT: Award of Grants for Counter-Terrorism Coordination Activities
by States and Territories

FROM: Cynthia C. Dougherty, Director /S/
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I - X

PURPOSE

The purpose of this memorandum is to provide information on grants that the Environmental Protection Agency will award for counter-terrorism coordination activities by the States and Territories under an FY 2004 appropriation in the State and Tribal Assistance Grants (STAG) account of \$4,970,500 (\$5 million minus the 0.59% rescission). Additionally, if there are no subsequent major changes to this grants program to the States and Territories then this guidance will apply to FY 2005 and beyond. Allotments of funds to States and Territories will be provided when the funds become available in the appropriate fiscal years.

BACKGROUND AND AUTHORIZATION

This grant to the States and Territories program, established in FY 2002, was authorized by the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (Public Law 107-117), which was enacted on January 10, 2002. A request for the continuation of this grant program at the same level – \$5 million – was included in the FY 2004 President's Budget and was appropriated in the Consolidated Appropriations Resolution of 2004 (Public Law 108-199).

STAG funding in the amount of \$4,970,500 is now available to EPA for award to States and Territories to continue the support of counter-terrorism coordination

activities by the States and Territories in protecting the Nation's drinking water systems. Regional programs supporting Tribal water systems are again requested to use funds in the existing Public Water System Supervision (PWSS) Tribal Reserve for assistance to Tribal water utilities. Regions have the authority to adjust priorities for use of their Tribal Reserve allotment to fund needed homeland security activities. Funds were also made available to the Regions in FY 2002-2003 for additional counter-terrorism support to Tribes. No additional counter-terrorism support funding for Tribal water utilities will be available in FY 2004.

In FY 2004, the authorization for this grant program is section 1442 of the Safe Drinking Water Act, as amended. Consequently, these grants can be awarded only to the States' drinking water programs, and the activities supported must be consistent with sub-sections (a) and (c) of section 1442. Eligible activities are described below.

These grants are exempt from the Grants Competition Policy, EPA Order 5700.5. The Assistant Administrator for Administration and Resources Management, approved this exemption on July 2, 2003. (See Attachment A.)

PROJECT SPECIFIC GUIDELINES

Program Office Responsibilities

The Regional Program Offices are responsible for soliciting non-competitive grant applications from their respective States and Territories under **program code WP**. Instead of new grants, however, the Regions may choose to amend the coordination grants awarded in FY 2002 to add the new funds. (See "Uses of Funds" below.)

The Regions are also responsible for complying with all Office of Water and EPA award, monitoring, and close-out requirements. Catalog of Federal Domestic Assistance (CFDA) **#66.474** should be used on all grant applications. Like the FY 2002 and FY 2003 grants, inter-governmental review under E.O. 12372 is not required for this program.

On November 14, 2003, EPA disseminated a memorandum entitled "Performance Standards for Grants Management." This memorandum requires that performance standards established for project officers and their supervisors adequately address grants management responsibilities.

Delegation of Authority

Authority to award grants to the States and Territories is delegated to the Regional Administrators under 9-10 (revised April 11, 2001) of the Delegations Manual (1200 TN 526) with re-delegation to Division Directors. (See Attachment B.)

Allocation of Funds

This FY 2004 appropriation was made available in STAG funds, which are to remain available until expended. As was the case in FY 2002 and FY 2003, a modification of the basic PWSS formula was chosen to allocate the \$4,970,500, with each State to receive a minimum of \$50,000 and each Territory at least \$16,700. Attachment C shows the allocation by State and Territory. The Office of Ground Water and Drinking Water (OGWDW) has reprogrammed these STAG funds to each Region for distribution to the States and Territories. Accounting information to be used includes:

- Program Results Code 201B25E
- Budget Year 2004
- Appropriations Code E

Uses of Funds

As in FY 2002 and FY 2003, the States and Territories are to use funds obtained under these grants for coordination activities for critical water infrastructure protection efforts that include work with water systems as well as with State, local and Federal agencies. (Regions 3 and 8 will administer funds designated for the District of Columbia and Wyoming respectively.) These activities include coordinating and providing technical assistance, training and education within the State or Territory on homeland security issues (particularly with homeland security offices and emergency response officials) relating to: ensuring the quality of drinking water utility vulnerability assessments and associated security enhancements; and developing and overseeing emergency response and recovery plans. No match (share cost) for these grant funds is required.

Specifically, under these grants (whether new or amended grants) States/Territories need to describe activities and/or strategies that would assist in emergency response and recovery preparedness. Among the emergency response and recovery plan implementation activities that could be funded are table-top workshops, exercises, drills, response protocols or other activities focusing on implementing security enhancements and improving the readiness of individuals and groups involved in first response at a drinking water system.

Each Region may choose to award the available FY 2004 funds either by issuing new grants or by amending the existing grants awarded to States and Territories. This guidance assumes that all FY 2002 funds have been obligated. If that is not the case, Regions that elected to amend previous grants are first to obligate all FY 2002 and FY 2003 funds before they charge payments against FY 2004 funds.

Limitations on Use of Funds

These funds are to be used solely for the activities described in this guidance

memorandum and should not be incorporated into a Performance Partnership Grant.

Pre-Award

Pre-award costs are allowable, if new grants are awarded, for up to 90 days prior to the date of this guidance. Pre-award costs are not appropriate if the Region amends current grants.

Environmental Results

This grant award supports Goal 2, "Clean and Safe Water," of EPA's 2003 – 2008 Strategic Plan. Specifically, this award will enhance public health protection by securing critical water infrastructure through support for counter-terrorism preparedness. The Program Results Code (PRC) assigned to the funding for this project is consistent with that goal.

Post-Award Management

Given the variations between Regions, each Region may determine for itself what level of monitoring is appropriate for these grants so long as the Regions comply with OW and Agency requirements. (Attachment D contains pertinent information.)

EPA Order 5700.6, revised January 8, 2004, streamlines post-award management of assistance agreements and helps ensure effective oversight of recipient performance and management. The Order encompasses both the administrative and programmatic aspects of the Agency's financial assistance programs. It requires each EPA program office providing assistance to develop and carry out a post-award monitoring plan, and conduct basic monitoring for every award. From the programmatic standpoint, this monitoring should ensure satisfaction of five core areas: (1) compliance with all programmatic terms and conditions, (2) correlation of the recipient's work plan/application and actual progress under the award, (3) availability of funds to complete the project, (4) proper management of and accounting for equipment purchased under the award, and (5) compliance with all statutory and regulatory requirements of the program. If during monitoring, it is determined that there is reason to believe that the grantee has committed or commits fraud, waste and/or abuse, then the project officer must contact the Office of Inspector General. Advanced monitoring activities must be documented in the official grant file and the grantee compliance database.

ACTIONS

Upon receipt of this guidance, your Office is requested to initiate the process whereby the States and Territories may apply for these grants. I urge you work with the States and Territories to apply as soon as possible so that you may obligate most, if not all, of these funds by September 30 of this year.

* * * * *

We look forward to continuing to work with you and your staff to develop effective, efficient approaches to ensuring the most systems are as safe as possible as soon as possible. If you have any questions on this particular portion of the program, please contact Andrew (Andy) Bielanski of the OGWDW's Water Security Division at (202) 564-3824 and bielanski.andrew@epa.gov.

cc: Water Protection Task Force Regional contacts
Regional Water Branch Chiefs
R. Kuhlman, GAD
K. Miller (Congressional Review Act)
J. Taft, ASDWA
(Regions to inform State Drinking Water Administrators)

Attachments A - D

Attachment A (copy of signed document on file)

JUSTIFICATION FOR A NON-COMPETITIVE ASSISTANCE PROGRAM

Water Security Coordination Grants to the States

I. BACKGROUND

In the FY 02 supplemental appropriation for defense and homeland security activities, EPA received a total of \$88.8 million to enhance and strengthen the protection of the Nation's critical water infrastructure (drinking water and wastewater). Included in this total was \$5.0 million in the State and Tribal Assistance Grants appropriation account (STAG) to support counter-terrorism coordination activities by the states/tribes/territories in protecting drinking water systems.

A new grant program to the States/Tribes/Territories (Catalog of Federal Domestic Assistance #66.474) was established and funds were awarded in 2002 prior to the effective date of EPA Order 5700.5. This program, however, was not included in the list of EPA grant programs that are exempt from the competition policy now in effect.

II. EXCEPTION TO FULL AND OPEN COMPETITION

In accordance with the processes and procedures of EPA Order 5700.5, the Office of Water requests exemption from competition for assistance agreements awarded under the Water Security Grant Program. Two provisions of this order are applicable justifications, i.e., section 7.2 the interests of national security and section 8.4 the award is required by Federal statute to identified recipients pursuant to language in the FY 02 supplemental appropriations act.

For making grants for emergency expenses to respond to the September 11, 2001, terrorist attacks on the United States, and to support activities related to countering potential biological and chemical threats to populations, for 'State and tribal assistance grants', \$5,000,000, to remain available until expended, to be obligated from amounts made available in Public Law 107-38. (See Attachment 1)

III. FACTS BEARING ON THE CONCLUSION

1. Under Presidential Decision Directive 63, EPA has been assigned lead federal responsibility for the water sector in matters of critical water infrastructure protection.
2. The report accompanying the FY 02 supplemental appropriations act clearly identifies the purposes of the \$5.0 million appropriated in the STAG account, i.e., "for State grants for counter-terrorism coordinators to work with EPA and drinking water utilities in assessing drinking water safety." (See Attachment 2)

3. Competing these funds would be inconsistent with the intent of the Congress because the language is clear that the States/tribes/territories are to be the recipients of these funds and competition could result in an uneven level of coordination nationwide. Accordingly, a formula, based on an existing formula grant to the States for drinking water programs, was developed in FY 02 ensuring that each State will receive a minimum of \$50,000 and each Territory at least \$16,700 of these funds. Funds for Indian tribes are available from a set aside that has been established to assist them in a variety of drinking water, including infrastructure protection, activities.

4. For national security purposes, these funds need to be awarded expeditiously to the states so that there is no interruption in their ongoing water security coordination endeavors.

5. This justification shall be effective for as long as the President's annual budget to the Congress includes a request for funds for this grant program and Congress appropriates such funds.

IV. CONCLUSION

Based on the foregoing, the Office of Water has concluded that it is appropriate to award the grant program to the states/tribes/territories for water security coordination on a non-competitive basis. This program justification is accurate and complete to the best of our knowledge.

APPROVALS

RECOMMENDED:

_____/S/_____
G. Tracy Mehan, III
Assistant Administrator for Water

Date: 6/20/03

CONCURRENCE:

_____/S/_____
Pat Patterson
Associate Director for Competition and Strategic Planning
Office of Grants and Debarment

Date: 6/25/03

APPROVAL:

_____/S/_____
Morris X. Winn
Assistant Administrator
Office of Administration and Resources Management

Date: 7/02/03

Attachments

Attachment B

DELEGATIONS MANUAL

1200 TN 526
04/11/2001

SAFE DRINKING WATER ACT

9-10. Assistance, Information, and Training of Personnel

1. AUTHORITY. Pursuant to Section 1442 of the Safe Drinking Water Act, as amended, authority to:

- a. Conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including improved methods of protecting underground sources of drinking water.
- b. Perform the EPA functions and responsibilities relative to collecting and making available information; making available Agency facilities; and approving assistance agreements for training projects and for the development and expansion of programs of States and municipalities in accordance with Sections (a)(2) and (c).
- c. Approve assistance agreements for the purpose of improving water quality to any individuals, public agency, educational institutions, publicly owned water systems, persons, and any other non-profit organization in accordance with Section (a), supplemented, as appropriate, for international awards by the National Environmental Policy Act, Section 102(2)(F).
- d. Approve grants or cooperative agreements to any public agency, educational institution, and any other organization for training projects authorized by Section 1442(c)(3)(A), and 1442(c)(1) of the Safe Drinking Water Act, as amended.

2. TO WHOM DELEGATED.

Authorities (a) and (b) are delegated to the Assistant Administrator for Water and Regional Administrators.

Authority (c) is delegated to the Assistant Administrator for Water.

Authority (d) is delegated to the Assistant Administrator for Water, the Assistant Administrator for Research and Development, and Regional Administrators.

3. LIMITATIONS.

- a. The authority delegated does not include research within the purview of the Office of Research and Development.
- b. The authority delegated to the Regional Administrators under (b) does not include Section 1442(c)(2).
- c. The authority delegated to the Assistant Administrator for Research and Development is limited to multi-disciplinary training assistance initiated and funded by an office other than the primary holder of training grant authority.

4. REDELEGATION AUTHORITY. These authorities may be redelegated to the Division Director level, or equivalent, and may not be redelegated further.

Attachment C

FY 2004 ALLOTMENT OF STAG FUNDS TO
STATES AND TERRITORIES
FOR COUNTER-TERRORISM ACTIVITIES

STATE/REGION	ALLOTMENT
CT	\$71,200
ME	\$50,000
MA	\$58,300
NH	\$56,100
RI	\$50,000
VT	\$50,000
REGION 1 TOTAL	\$335,600
NJ	\$100,500
NY	\$235,700
PR	\$50,000
VI	\$16,700
REGION 2 TOTAL	\$402,900
DC	\$50,000
DE	\$50,000
MD	\$78,000
PA	\$208,100
VA	\$108,300
WV	\$50,000
REGION 3 TOTAL	\$544,400
AL	\$50,000
FL	\$186,900
GA	\$107,200
KY	\$50,000
MS	\$64,500
NC	\$170,400
SC	\$55,600
TN	\$55,700
REGION 4 TOTAL	\$740,300
IL	\$148,700
IN	\$100,200
MI	\$216,000
MN	\$126,100
OH	\$147,800
WI	\$163,200
REGION 5 TOTAL	\$902,000

STATE/REGION	ALLOTMENT
AR	\$51,200
LA	\$73,000
NM	\$53,600
OK	\$69,900
TX	<u>\$288,900</u>
REGION 6 TOTAL	\$536,600
IA	\$69,600
KS	\$57,700
MO	\$95,600
NE	<u>\$51,100</u>
REGION 7 TOTAL	\$274,000
CO	\$75,200
MT	\$62,300
ND	\$50,000
SD	\$50,000
UT	\$50,000
WY	<u>\$50,000</u>
REGION 8 TOTAL	\$337,500
AZ	\$69,900
CA	\$298,600
HI	\$50,000
NV	\$50,000
AS	\$16,700
GU	\$16,700
NMI	<u>\$16,700</u>
REGION 9 TOTAL	\$518,600
AK	\$109,900
ID	\$60,100
OR	\$79,500
WA	<u>\$129,100</u>
REGION 10 TOTAL	\$378,600
GRAND TOTAL ALLOCATED	\$4,970,500

Attachment D
Some pertinent information
(EPA orders, Grants policy issuances, OW guidance)

1. EPA Orders: <http://epawww.epa.gov/rmpolicy/ads/transorders.htm>

- Order 5700.6, "Policy on Compliance, Review and Monitoring"
(replaces EPA Order 5700.3, "EPA Policy for Post-Award Management of Grants and Cooperative Agreements by Headquarters and Regional Offices"; also replaces GPI-99-5, "EPA Policy for Post-Award Management of Grants and Cooperative Agreements by Headquarters and Regional Offices" as well as GPI-98-6, "Post Award Management of Assistance Agreements")

- EPA Order 5730.1A1, "Policy and Procedures for Funding Assistance Agreements"

2. Grants Policy Issuances: <http://basin.rtpnc.epa.gov:9876/ogd/grantspolicydocs.nsf>
(scroll down menu at left and click on Grants Policy Issuances).

3. OW information on grants: <http://intranet.epa.gov/ow/> Click on
CONTRACTS/GRANTS at upper right.

- "Assistance Management Handbook for Managers" Fall 1999, on OW requirements

4. Code of Federal Regulations:
http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfrv1_00.html

- 40 CFR 31 - Uniform administrative requirements for grants and cooperative agreements to state and local governments

5. Grant application forms:
<http://www.epa.gov/ogd/AppKit/application.htm>